

SENATE BILL 186

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2004 Regular Session  
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By: **The President (By Request - Administration) and Senators Astle, Brinkley, Brochin, Currie, Della, Dyson, Greenip, Hafer, Harris, Hollinger, Hooper, Jacobs, Jimeno, Kittleman, Klausmeier, Lawlah, Middleton, Munson, Schrader, Stoltzfus, and Stone**

Introduced and read first time: January 23, 2004  
Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 22, 2004

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Brownfields Redevelopment Reform Act**

3 FOR the purpose of providing that certain applicants and certain properties may be  
4 eligible to participate in the Voluntary Cleanup Program in the Maryland  
5 Department of the Environment (~~MDE~~) under certain conditions; altering the  
6 process by which a person may apply for, receive, and maintain inculpable  
7 person status; requiring ~~MDE~~ the Department to review certain standards in a  
8 certain time period; establishing certain application fees under certain  
9 circumstances; altering certain application fees; ~~authorizing MDE to develop~~  
10 requiring the Department to adopt certain regulations; altering certain  
11 procedures and requirements for applications to the Voluntary Cleanup  
12 Program; altering certain procedures and deadlines for public participation in  
13 ~~MDE's~~ the Department's process of approving response action plans;  
14 establishing certain liability protection for certain participants receiving a no  
15 further requirements notice; establishing certain liability protections for certain  
16 participants and successors in interest to certain property; requiring certain  
17 persons to submit certain information to a one-call system in Maryland;  
18 requiring certain persons to be responsible for the cost of cleaning up a property  
19 under certain conditions; establishing certain fees for certain conditions on  
20 certain property; authorizing the State to bring a civil action for punitive  
21 ~~damage~~ damages against certain persons who fail to comply with certain orders  
22 under certain circumstances; clarifying that certain actions by the Department  
23 do not affect certain active enforcement actions; ~~requiring MDE to approve a~~  
24 ~~response action plan for a portion of a property under certain conditions~~;  
25 requiring ~~MDE~~ the Department to convene a certain work group; authorizing

1 certain agents or employees to enter certain private land in Montgomery County  
2 and Baltimore City under certain conditions; providing that certain persons and  
3 contaminated properties are eligible for money from the Brownfields  
4 Redevelopment Incentive Program in the Department of Business and Economic  
5 Development; altering certain requirements for certain local governments to  
6 participate in the program; altering the process for the distribution and use of  
7 certain contributions; ~~defining~~ altering the definitions of certain terms; and  
8 generally relating to the Voluntary Cleanup Program and the Brownfields  
9 Redevelopment Incentive Program.

10 BY adding to

11 Article - Environment  
12 Section 7-266.1 and 7-506.1  
13 Annotated Code of Maryland  
14 (1996 Replacement Volume and 2003 Supplement)

15 BY repealing and reenacting, with amendments,

16 Article - Environment  
17 Section 7-501(e), (g), and (j), 7-505, 7-506, 7-509, ~~7-510(a)~~, 7-511(a), 7-512(a),  
18 7-514, and 7-515  
19 Annotated Code of Maryland  
20 (1996 Replacement Volume and 2003 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article - Real Property  
23 Section 12-111(f)  
24 Annotated Code of Maryland  
25 (2003 Replacement Volume and 2003 Supplement)

26 BY repealing and reenacting, with amendments,

27 Article 83A - Business and Economic Development  
28 Section 5-1401(j) and 5-1408(a)  
29 Annotated Code of Maryland  
30 (2003 Replacement Volume)

31 BY repealing and reenacting, with amendments,

32 Article - Tax - Property  
33 Section 9-229(g)  
34 Annotated Code of Maryland  
35 (2001 Replacement Volume and 2003 Supplement)

36 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
37 MARYLAND, That the Laws of Maryland read as follows:

1

**Article - Environment**

2 7-266.1.

3 ~~(A) (1) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN~~  
4 ~~EQUITY, ANY RESPONSIBLE PERSON WHO FAILS WITHOUT GOOD CAUSE TO COMPLY~~  
5 ~~WITH A FINAL ORDER OF THE STATE IN ACCORDANCE WITH THIS SUBTITLE MAY BE~~  
6 ~~LIABLE TO THE STATE FOR PUNITIVE DAMAGES.~~

7 ~~(2) PUNITIVE DAMAGES MAY BE ASSESSED IN AN AMOUNT NOT TO~~  
8 ~~EXCEED THREE TIMES THE AMOUNT OF ANY COSTS INCURRED BY THE STATE AS A~~  
9 ~~RESULT OF SUCH FAILURE.~~

10 ~~(3) A RESPONSIBLE PERSON SHALL BE ENTITLED TO A CONTESTED~~  
11 ~~CASE HEARING FOR A DETERMINATION WHETHER THE RESPONSIBLE PERSON HAS~~  
12 ~~FAILED WITHOUT GOOD CAUSE TO COMPLY WITH A FINAL ORDER OF THE STATE IN~~  
13 ~~ACCORDANCE WITH THIS SUBTITLE.~~

14 ~~(4) PUNITIVE DAMAGES MAY BE CALCULATED ONLY ON THE COSTS~~  
15 ~~ARISING AFTER THE DATE A DETERMINATION IS MADE UNDER PARAGRAPH (3) OF~~  
16 ~~THIS SUBSECTION.~~

17 ~~(B) THE STATE IS AUTHORIZED TO COMMENCE A CIVIL ACTION AGAINST ANY~~  
18 ~~PERSON TO RECOVER PUNITIVE DAMAGES IN ACCORDANCE WITH SUBSECTION (A)~~  
19 ~~OF THIS SECTION, WHICH SHALL BE IN ADDITION TO ANY COSTS RECOVERED FROM~~  
20 ~~THE PERSON IN ACCORDANCE WITH § 7-221 OF THIS SUBTITLE.~~

21 ~~(A) IN ADDITION TO BEING SUBJECT TO PENALTIES UNDER §§ 7-266 AND 7-267~~  
22 ~~OF THIS SUBTITLE AND COST RECOVERY UNDER § 7-221 OF THIS SUBTITLE, A~~  
23 ~~RESPONSIBLE PERSON WHO FAILS WITHOUT SUFFICIENT CAUSE TO COMPLY WITH A~~  
24 ~~FINAL ORDER ISSUED UNDER THIS SUBTITLE IS SUBJECT TO PUNITIVE DAMAGES,~~  
25 ~~NOT EXCEEDING THREE TIMES THE AMOUNT OF ANY COSTS THAT ARE INCURRED BY~~  
26 ~~THE STATE:~~

27 ~~(1) AFTER THE DATE OF THE FINAL DECISION AS PROVIDED IN~~  
28 ~~SUBSECTION (B) OF THIS SECTION; AND~~

29 ~~(2) AS A RESULT OF THE RESPONSIBLE PERSON'S FAILURE TO COMPLY~~  
30 ~~WITH THE FINAL ORDER.~~

31 ~~(B) (1) BEFORE SEEKING THE PUNITIVE DAMAGES AUTHORIZED BY~~  
32 ~~SUBSECTION (A) OF THIS SECTION, THE DEPARTMENT SHALL ISSUE TO THE~~  
33 ~~RESPONSIBLE PERSON A DETERMINATION THAT THE RESPONSIBLE PERSON FAILED~~  
34 ~~WITHOUT SUFFICIENT CAUSE TO COMPLY WITH A FINAL ORDER ISSUED UNDER THIS~~  
35 ~~SUBTITLE.~~

36 ~~(2) A RESPONSIBLE PERSON SUBJECT TO A DETERMINATION ISSUED BY~~  
37 ~~THE DEPARTMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION IS ENTITLED TO A~~  
38 ~~CONTESTED CASE HEARING TO DETERMINE WHETHER THE RESPONSIBLE PERSON~~  
39 ~~HAD SUFFICIENT CAUSE FOR THE FAILURE TO COMPLY WITH THE FINAL ORDER.~~

1           (3)     FOLLOWING A FINAL DECISION UPHOLDING THE DETERMINATION  
 2 ISSUED BY THE DEPARTMENT, THE STATE MAY COMMENCE A CIVIL ACTION AGAINST  
 3 THE RESPONSIBLE PERSON TO RECOVER THE PUNITIVE DAMAGES.

4 7-501.

5       (e)     "Contamination" means a release, discharge, or threatened release of:

6           (1)     [a] A controlled hazardous substance, as defined in § 7-201 of this  
 7 title; OR

8           (2)     OIL, AS DEFINED IN § 4-401 OF THIS ARTICLE.

9       (g)     (1)     "Eligible property" means property ~~OR A PORTION OF A PROPERTY~~  
 10 that is contaminated or perceived to be contaminated.

11           (2)     "Eligible property" does not include property that is:

12                   (i)     On the national priorities list under § 105 of the federal act;

13                   (ii)    [Under] EXCEPT AS PROVIDED IN PARAGRAPH (3)(I) OF THIS  
 14 SUBSECTION, UNDER active enforcement; or

15                   (iii)   Subject to a controlled hazardous substances permit issued in  
 16 accordance with Title 7 of this article.

17           (3)     (I)     "ELIGIBLE PROPERTY" ~~MAY INCLUDE~~ INCLUDES A SITE UNDER  
 18 ACTIVE ENFORCEMENT IF:

19                               1.     ALL APPLICATIONS FILED IN CONNECTION WITH THE  
 20 PROPERTY ARE FILED BY INCULPABLE PERSONS; AND

21                               2.     ANY RESPONSE ACTION PLAN AND CLEANUP CRITERIA  
 22 APPROVED BY THE DEPARTMENT UNDER THIS SUBTITLE ~~ARE IS~~ AT LEAST AS  
 23 PROTECTIVE OF PUBLIC HEALTH AND THE ENVIRONMENT AS THE REQUIREMENTS  
 24 OF ANY OUTSTANDING ACTIVE ENFORCEMENT ACTION.

25                   (II)    "Eligible property" includes sites listed on the Comprehensive  
 26 Environmental Response, Compensation, and Liability Information System.

27       (j)     (1)     "Inculpable person" means a person who:

28                   (i)     Has no prior or current ownership interest in an eligible  
 29 property at the time of application to participate in the Voluntary Cleanup Program;  
 30 and

31                   (ii)    Has not caused or contributed to contamination at the eligible  
 32 property at the time of application to participate in the Voluntary Cleanup Program.

33           (2)     "Inculpable person" includes:

1 (I) [a] A successor in interest in an eligible property acquired from  
2 an inculpable person, as defined in paragraph (1) of this subsection, if the successor in  
3 interest does not have a prior ownership interest in the eligible property and, other  
4 than by virtue of ownership of the eligible property, is not otherwise a responsible  
5 person at the eligible property; AND

6 (II) NOTWITHSTANDING PARAGRAPH (1)(I) OF THIS SUBSECTION, A  
7 PERSON WHO IS NOT CONSIDERED A RESPONSIBLE PERSON UNDER § 7-201(X)(2) OF  
8 THIS TITLE.

9 7-505.

10 (a) (1) If the Department approves ~~an applicant's~~ A PERSON'S status as an  
11 inculpable person under § [7-506(b)(1)(i)1] ~~7-506(E)(1)(i) of this subtitle, the~~  
12 ~~participant's~~ PERSON'S status as an inculpable person continues upon acquiring an  
13 interest in the eligible property.

14 (2) ~~IF THE APPLICANT PERSON MEETS THE REQUIREMENTS OF §~~  
15 ~~7-506(A) 7-506(A)(1)(I), (II), AND (III) OF THIS SUBTITLE, THE DEPARTMENT SHALL~~  
16 ~~APPROVE OR DISAPPROVE AN APPLICANT'S~~ THE PERSON'S STATUS AS AN  
17 INCULPABLE PERSON WITHIN 5 BUSINESS DAYS OF RECEIVING:

18 (I) A WRITTEN REQUEST FROM THE APPLICANT PERSON FOR AN  
19 EXPEDITED DETERMINATION OF THE APPLICANT'S PERSON'S STATUS AS AN  
20 INCULPABLE PERSON; AND

21 (II) A FEE OF \$2,000.

22 (3) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, THE  
23 DEPARTMENT'S APPROVAL OF A PERSON'S STATUS AS AN INCULPABLE PERSON  
24 EXPIRES IF THE APPLICATION, INCLUDING ANY APPLICABLE FEES, REQUIRED  
25 UNDER THIS SUBTITLE IS NOT FILED WITHIN 6 MONTHS AFTER THE APPROVAL OF A  
26 PERSON'S STATUS AS AN INCULPABLE PERSON.

27 (b) Except as provided in subsection (c) of this section, an inculpable person is  
28 not liable for existing contamination at the eligible property.

29 (c) An inculpable person shall be liable for:

30 (1) New contamination that the person causes or contributes to at the  
31 eligible property; and

32 (2) Exacerbation of existing contamination at the eligible property.

33 7-506.

34 (a) To participate in the Program, an applicant shall:

35 (1) Submit an application, on a form provided by the Department, that  
36 includes:

1 (i) Information demonstrating to the satisfaction of the  
 2 Department that the contamination did not result from the applicant knowingly or  
 3 willfully violating any law or regulation concerning controlled hazardous substances;

4 (ii) Information demonstrating the person's status as a responsible  
 5 person or an inculpable person;

6 (iii) Information demonstrating that the property is an eligible  
 7 property as defined in § 7-501 of this subtitle;

8 (iv) A detailed report with all available relevant information on  
 9 environmental conditions including contamination at the eligible property known to  
 10 the applicant at the time of the application;

11 (v) ~~+~~ An environmental site assessment that includes:

12 ~~A.~~ 1. [established] ESTABLISHED Phase I [and Phase II]  
 13 site assessment standards and follows principles established by the American Society  
 14 for Testing and Materials and that demonstrates to the satisfaction of the  
 15 Department that the assessment has [adequately investigated all potential sources  
 16 and areas of contamination] BEEN CONDUCTED IN ACCORDANCE WITH THOSE  
 17 STANDARDS AND PRINCIPLES; AND

18 ~~B.~~ 2. A PHASE II SITE ASSESSMENT ~~IF~~ UNLESS THE  
 19 DEPARTMENT CONCLUDES, AFTER REVIEW OF THE PHASE I SITE ASSESSMENT, THAT  
 20 THERE ARE IS SUFFICIENT INFORMATION TO DETERMINE THAT THERE ARE NO  
 21 RECOGNIZED ENVIRONMENTAL CONDITIONS, AS DEFINED BY THE AMERICAN  
 22 SOCIETY FOR TESTING AND MATERIALS; AND

23 ~~2. FOR AN APPLICATION FOR A PORTION OF A PROPERTY IN~~  
 24 ~~ACCORDANCE WITH § 7-501(G)(1) OF THIS SUBTITLE, AN ENVIRONMENTAL SITE~~  
 25 ~~ASSESSMENT THAT HAS BEEN CONDUCTED FOR THE ENTIRE PROPERTY; and~~

26 (vi) A description, in summary form, of a proposed voluntary  
 27 cleanup project that includes the proposed cleanup criteria under § 7-508 of this  
 28 subtitle and the proposed future use of the property, if appropriate; and

29 (2) Pay to the Department:

30 (I) [an] AN INITIAL application fee of \$6,000[, unless the  
 31 Department determines that a lesser fee would be sufficient to cover the costs  
 32 described in subsection (d) of this section] WHICH THE DEPARTMENT MAY REDUCE  
 33 ON A DEMONSTRATION OF FINANCIAL HARDSHIP IN ACCORDANCE WITH  
 34 SUBSECTION (B) OF THIS SECTION; ~~AND~~

35 (II) AN APPLICATION FEE OF \$2,000 FOR EACH APPLICATION  
 36 SUBMITTED SUBSEQUENT TO THE INITIAL APPLICATION FOR THE SAME PROPERTY;  
 37 AND

1                    (III) AN APPLICATION FEE OF \$2,000 FOR EACH APPLICATION  
2 SUBMITTED SUBSEQUENT TO THE INITIAL APPLICATION FOR CONTIGUOUS OR  
3 ADJACENT PROPERTIES THAT ARE PART OF THE SAME PLANNED UNIT  
4 DEVELOPMENT OR A SIMILAR DEVELOPMENT PLAN.

5        (B)        THE DEPARTMENT SHALL ADOPT REGULATIONS TO ESTABLISH CRITERIA  
6 FOR DETERMINING ~~WHETHER AN APPLICANT'S STATUS FOR A DEMONSTRATION OF~~  
7 APPLICANT HAS DEMONSTRATED FINANCIAL HARDSHIP.

8        (C)        (1)        THE APPLICANT MAY DELAY SUBMITTING THE PHASE II SITE  
9 ASSESSMENT UNTIL AFTER THE APPLICATION AND APPLICABLE FEES ARE  
10 SUBMITTED.

11                (2)        IF AN APPLICANT DELAYS FILING A PHASE II SITE ASSESSMENT, ALL  
12 RELATED DEADLINES FOR PUBLIC NOTICE AND ACTION BY THE DEPARTMENT SHALL  
13 BE EXTENDED AND CONFORM WITH THE DATE THE PHASE II SITE ASSESSMENT IS  
14 SUBMITTED AND THE APPLICATION IS COMPLETE.

15        (D)        (1)        ON SUBMISSION OF THE APPLICATION, THE DEPARTMENT SHALL  
16 PUBLISH A NOTICE OF THE APPLICATION ON ITS WEBSITE AND THE APPLICANT  
17 SHALL POST NOTICE AT THE PROPERTY THAT IS THE SUBJECT OF THE APPLICATION.

18                (2)        THE NOTICES REQUIRED UNDER PARAGRAPH (1) OF THIS  
19 SUBSECTION SHALL INCLUDE:

20                    (I)        THE NAME AND ADDRESS OF THE APPLICANT AND THE  
21 PROPERTY; ~~AND~~

22                    (II)        THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE  
23 OFFICE WITHIN THE DEPARTMENT FROM WHICH INFORMATION ABOUT THE  
24 APPLICATION MAY BE OBTAINED; AND

25                    (III) THE TIME PERIOD DURING WHICH THE DEPARTMENT WILL  
26 RECEIVE AND CONSIDER WRITTEN COMMENTS FROM THE PUBLIC.

27        [(b)]        (E)        (1)        (i)        The Department shall notify the applicant in writing,  
28 within [60] 45 days after receipt of the application, whether:

29                                1.        The application, including the applicant's status as a  
30 responsible person or an inculpable person, is approved;

31                                2.        The application is denied or incomplete; or

32                                3.        The Department has no further requirements related to  
33 the investigation of controlled hazardous substances at the eligible property as  
34 provided in paragraph (3) of this subsection.

35                                (ii)        If the Department denies the application or determines that the  
36 application is incomplete, the Department shall provide to the applicant the reasons  
37 for its decision in writing.

1                   (2)    (i)    An applicant may resubmit an application within 60 days after  
2 receipt of notice of the Department's decision to deny the initial application or  
3 determination that the application is incomplete.

4                   (ii)    The Department shall approve or deny a resubmitted or revised  
5 application within 30 days after receipt.

6                   (3)    If the Department notifies the applicant that the Department has no  
7 further requirements at the eligible property in accordance with paragraph (1)(i)3 of  
8 this subsection, the Department shall include a statement that this notice does not:

9                   (i)    Subject to the provisions of § 7-505 of this subtitle, prevent the  
10 Department from taking action against any person to prevent or abate an imminent  
11 and substantial endangerment to the public health or the environment at the eligible  
12 property;

13                   (ii)    Remain in effect if the notice of no further requirements is  
14 obtained through fraud or a material misrepresentation;

15                   (iii)   Affect the authority of the Department to take any action  
16 against a responsible person concerning previously undiscovered contamination at an  
17 eligible property after a no further requirements notice has been issued by the  
18 Department; or

19                   (iv)    Affect the authority of the Department to require additional  
20 cleanup for future activities at the site that result in contamination by hazardous  
21 substances.

22                   (4)    THE NO FURTHER REQUIREMENTS NOTICE SHALL PROVIDE THE  
23 SAME LIABILITY PROTECTIONS AS PROVIDED IN § 7-513(B)(3) AND (4) OF THIS  
24 SUBTITLE.

25                   (5)    THE PARTICIPANT AND ANY SUCCESSORS IN INTEREST IN A  
26 PROPERTY SUBJECT TO A NO FURTHER REQUIREMENTS NOTICE SHALL CONTINUE  
27 TO BE PROTECTED FROM LIABILITY IN THE EVENT OF ANY VIOLATION OF THE  
28 CONDITIONS PLACED ON THE USE OF THE PROPERTY, PROVIDED THAT THE  
29 PARTICIPANT AND ANY SUCCESSORS IN INTEREST DID NOT CAUSE OR CONTRIBUTE  
30 TO THE VIOLATION.

31   [(c)]   (F)    (1)    The Department shall deny an application if:

32                   (i)    The applicant is not an eligible applicant;

33                   (ii)    The property is not an eligible property; or

34                   (iii)   The property was initially contaminated by a release of  
35 hazardous substances after October 1, 1997 unless:

36                   1.    The property is acquired by an inculpable person; or



1 THE ONE-CALL SYSTEM UNDER TITLE 12 OF THE PUBLIC UTILITY COMPANIES  
2 ARTICLE.

3 (J) SUBJECT TO THE PROVISIONS OF § 7-516(A) OF THIS SUBTITLE AND  
4 APPROVAL BY THE DEPARTMENT, IF AN OWNER OF AN ELIGIBLE PROPERTY THAT  
5 HAS LIMITED PERMISSIBLE USES WANTS TO CHANGE THE USE OF THE ELIGIBLE  
6 PROPERTY, THE OWNER, ~~SUBJECT TO APPROVAL BY THE DEPARTMENT,~~ IS  
7 RESPONSIBLE FOR THE COST OF CLEANING UP THE PROPERTY TO THE APPROPRIATE  
8 STANDARD.

9 7-506.1.

10 (A) IF A DETERMINATION BY THE DEPARTMENT THAT IT HAS NO FURTHER  
11 REQUIREMENTS IS CONDITIONED ON CERTAIN USES OF THE PROPERTY OR ON THE  
12 MAINTENANCE OF CERTAIN CONDITIONS, THE PARTICIPANT SHALL PAY TO THE  
13 DEPARTMENT A FEE OF \$2,000.

14 (B) IF A CERTIFICATE OF COMPLETION IS CONDITIONED ON THE  
15 PERMISSIBLE USE OF THE PROPERTY, THE PARTICIPANT SHALL PAY TO THE  
16 DEPARTMENT A FEE OF \$2,000.

17 (C) ON A REQUEST BY A PARTICIPANT TO ALTER A RECORD OF  
18 DETERMINATION IN THE LAND RECORDS FOR AN ELIGIBLE PROPERTY WITH  
19 CONDITIONS IN ACCORDANCE WITH § 7-506(I) OR § 7-514(D) OF THIS SUBTITLE, THE  
20 PARTICIPANT SHALL PAY TO THE DEPARTMENT A FEE OF \$2,000.

21 7-509.

22 (a) Upon submission of a proposed response action plan, the participant:

23 (1) Shall publish a notice of a proposed response action plan once a week  
24 for 2 consecutive weeks in a daily or weekly newspaper of general circulation in the  
25 geographical area in which the eligible property is located that shall include:

26 (i) A summary of the proposed response action plan;

27 (ii) The name and address of the participant and eligible property;

28 (iii) The name, address, and telephone number of the office within  
29 the Department from which information about the proposed response action plan may  
30 be obtained;

31 (iv) An address to which persons may submit written comments  
32 about the proposed response action [plan or request a public informational meeting;  
33 and] PLAN;

34 (v) A deadline for the close of the public comment period by which  
35 written comments [or requests for a public informational meeting] must be received  
36 by the Department; and

1 (VI) THE DATE AND LOCATION OF THE PUBLIC INFORMATION  
2 INFORMATIONAL MEETING; AND

3 (2) Shall post at the eligible property a notice of intent to conduct a  
4 response action plan at that property.

5 (b) The Department shall receive written comments from the public for 30  
6 days after publication and posting required under this section OR 5 DAYS AFTER THE  
7 PUBLIC INFORMATIONAL MEETING REQUIRED UNDER THIS SECTION, WHICHEVER IS  
8 LATER.

9 (c) The Department shall hold a public informational meeting on the proposed  
10 response action plan at the participant's expense within [30] 45 40 days after [the  
11 Department receives a written request for a meeting from the applicant or the public]  
12 THE PUBLICATION OF THE NOTICE IN ACCORDANCE WITH SUBSECTION (A)(1) OF  
13 THIS SECTION.

14 ~~7-510.~~

15 ~~(a) (1) The Department shall approve a response action plan FOR AN~~  
16 ~~ELIGIBLE PROPERTY if the Department determines that the response action plan~~  
17 ~~protects public health and the environment.~~

18 ~~(2) THE DEPARTMENT SHALL APPROVE A RESPONSE ACTION PLAN FOR~~  
19 ~~A PORTION OF THE PROPERTY IN ACCORDANCE WITH § 7-501(G)(1) OF THIS SUBTITLE,~~  
20 ~~UNLESS THE DEPARTMENT DETERMINES THAT CONTAMINATION ON THE~~  
21 ~~REMAINDER OF THE PROPERTY REPRESENTS AN IMMINENT AND SUBSTANTIAL~~  
22 ~~ENDANGERMENT TO PUBLIC HEALTH OR THE ENVIRONMENT.~~

23 ~~7-511.~~

24 (a) Within [120] 75 days after the Department has received a proposed  
25 response action plan, the Department, after considering any comments the  
26 Department has received under § 7-509 of this subtitle, shall notify the participant in  
27 writing that:

28 (1) The response action plan has been approved; or

29 (2) The response action plan has been rejected and shall state the  
30 modifications in the response action plan that are necessary to receive the  
31 Department's approval.

32 ~~7-512.~~

33 (a) Except as provided in subsections (b) and (c) of this section, a participant  
34 may withdraw from the Program at the time of a pending application or response  
35 action plan, or after receiving a certificate of completion, and may not be obligated to  
36 complete an application or a response action plan if the participant:

1 (1) Provides 10 days written notice of the anticipated withdrawal to the  
2 Department;

3 (2) Stabilizes and secures the eligible property to the satisfaction of the  
4 Department to ensure protection of the public health and the environment; and

5 (3) Forfeits any [expended] application [and oversight] fees.

6 7-514.

7 (a) A response action plan approval letter does not:

8 (1) Subject to the provisions of § 7-505 of this subtitle, prevent the  
9 Department from taking action against any person to prevent or abate an imminent  
10 and substantial endangerment to the public health or the environment at the eligible  
11 property;

12 (2) Remain in effect if the response action plan approval letter is  
13 obtained through fraud or a material misrepresentation;

14 (3) Affect the authority of the Department to take any action against any  
15 person concerning new contamination or the exacerbation of existing contamination  
16 at an eligible property after a response action plan approval letter has been issued by  
17 the Department;

18 (4) Affect the authority of the Department to take any action against a  
19 responsible person concerning previously undiscovered contamination at an eligible  
20 property after a response action plan approval letter has been issued by the  
21 Department;

22 (5) Prevent the Department from taking action against any person who  
23 is responsible for long-term monitoring and maintenance as provided in the response  
24 action plan; or

25 (6) Prevent the Department from taking action against any person who  
26 does not comply with conditions on the permissible use of the eligible property  
27 contained in the response action plan approval letter.

28 (b) A certificate of completion does not:

29 (1) Subject to the provisions of § 7-505 of this subtitle, prevent the  
30 Department from taking action against any person to prevent or abate an imminent  
31 and substantial endangerment to the public health or the environment at the eligible  
32 property;

33 (2) Remain in effect if the certificate of completion is obtained through  
34 fraud or a material misrepresentation;

1 (3) Affect the authority of the Department to take any action against any  
2 person concerning new contamination or exacerbation of existing contamination at an  
3 eligible property after a certificate of completion has been issued by the Department;

4 (4) Affect the authority of the Department to take any action against a  
5 responsible person concerning previously undiscovered contamination at an eligible  
6 property after a certificate of completion has been issued by the Department;

7 (5) Prevent the Department from taking action against any person who  
8 is responsible for long-term monitoring and maintenance for failure to comply with  
9 the response action plan;

10 (6) Prevent the Department from taking action against any person who  
11 does not comply with conditions on the permissible use of the eligible property  
12 contained in the certificate of completion; or

13 (7) Subject to the provisions of § 7-512 of this subtitle, prevent the  
14 Department from requiring any person to take further action if the eligible property  
15 fails to meet the applicable cleanup criteria set forth in the response action plan  
16 approved by the Department.

17 (c) A response action plan approval letter or a certificate of completion may be  
18 transferred to any person whose actions did not cause or contribute to the  
19 contamination.

20 (d) (1) If a certificate of completion is conditioned on the permissible use of  
21 the property [for industrial or commercial purposes], the participant shall record the  
22 certificate of completion in the land records of the local jurisdiction within 30 days  
23 after receiving the certificate.

24 (2) If the certificate of completion has a conditioned use and the  
25 participant fails to record the certificate of completion in the land records in  
26 accordance with paragraph (1) of this subsection, the certificate of completion shall be  
27 void.

28 (3) (I) IF A CERTIFICATE OF COMPLETION IS CONDITIONED ON THE  
29 PERMISSIBLE USE OF THE PROPERTY, THE PARTICIPANT SHALL SEND A COPY OF THE  
30 CERTIFICATE OF COMPLETION TO A ONE-CALL SYSTEM, AS DEFINED IN § 12-101 OF  
31 THE PUBLIC UTILITY COMPANIES ARTICLE.

32 (II) ANY OBLIGATION FOR THE PARTICIPANT TO SEND THE  
33 INFORMATION REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT  
34 NEGATE THE OBLIGATION OF AN OWNER AS DEFINED UNDER § 12-101(F) OF THE  
35 PUBLIC UTILITY COMPANIES ARTICLE TO BECOME A MEMBER OF THE ONE-CALL  
36 SYSTEM UNDER TITLE 12 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

37 (e) Subject to the provisions of § 7-516(a) of this subtitle, if an owner of an  
38 eligible property that has limited permissible uses wants to change the use of the  
39 eligible property, the owner, subject to approval by the Department, is responsible for  
40 the cost of cleaning up the eligible property to the appropriate standard.

1 (F) THE PARTICIPANT AND ANY SUCCESSORS IN INTEREST IN A PROPERTY  
 2 SUBJECT TO A CERTIFICATE OF COMPLETION SHALL CONTINUE TO BE PROTECTED  
 3 FROM LIABILITY IN THE EVENT OF ANY VIOLATION OF THE CONDITIONS PLACED ON  
 4 THE USE OF THE PROPERTY, PROVIDED THAT THE PARTICIPANT AND ANY  
 5 SUCCESSORS IN INTEREST DID NOT CAUSE OR CONTRIBUTE TO THE VIOLATION.

6 7-515.

7 (A) The provisions of §§ 7-256 through 7-268 of this title shall be used and  
 8 shall apply to enforce violations of:

9 (1) This subtitle; or

10 (2) Any regulation adopted under this subtitle.

11 (B) ANY ACTION TAKEN BY THE DEPARTMENT UNDER THIS SUBTITLE AT A  
 12 SITE UNDER ACTIVE ENFORCEMENT MAY NOT:

13 (1) NEGATE THE TERMS AND CONDITIONS OF ANY OUTSTANDING  
 14 ACTIVE ENFORCEMENT ORDER, DECREE, JUDGMENT, PERMIT, OR OTHER DOCUMENT  
 15 THAT ADDRESSES ENVIRONMENTAL CONTAMINATION AT THE SITE; OR

16 (2) RELIEVE ANY PERSON WHO IS THE SUBJECT OF AN ACTIVE  
 17 ENFORCEMENT ACTION FROM LIABILITY FOR PENALTIES UNDER THE  
 18 ENFORCEMENT ACTION.

19 **Article - Real Property**

20 12-111.

21 (f) In Anne Arundel County, ~~MONTGOMERY COUNTY~~, OR BALTIMORE CITY, an  
 22 agent or employee, or one or more assistants of the ~~county~~ JURISDICTION, after real  
 23 and bona fide effort to notify the occupant or the owner, if the land is unoccupied or if  
 24 the occupant is not the owner, may enter on any private land to make test borings and  
 25 soil tests and obtain information related to such tests for the purpose of determining  
 26 the possibility of public use of the property. If an agent, employee, or assistant is  
 27 refused permission to enter or remain on any private land for the purposes set out in  
 28 this subsection, Anne Arundel County, ~~MONTGOMERY COUNTY~~, OR BALTIMORE CITY  
 29 may apply to a law court of the ~~county~~ JURISDICTION where the property or any part  
 30 of it is located for an order directing that its agent, employee, or assistant be  
 31 permitted to enter and remain on the land to the extent necessary to carry out the  
 32 purposes authorized by this subsection. The court may require that [Anne Arundel  
 33 County] THE APPLYING JURISDICTION post a bond in an amount sufficient to  
 34 reimburse any person for damages reasonably estimated to be caused by test borings,  
 35 soil tests, and related activities. If any person enters on any private land under the  
 36 authority of this section or of any court order passed pursuant to it and damages or  
 37 destroys any land or personal property on it, the owner of the property has a cause of  
 38 action for damages against [Anne Arundel County] THE JURISDICTION THAT ~~DID~~  
 39 ~~NOT AUTHORIZE~~ AUTHORIZED THE ENTRANCE. Any person who knows of an order

1 issued under this subsection and who obstructs any agent, employee or any assistant  
 2 acting under the authority of the order may be punished for contempt of court.

3

**Article 83A - Business and Economic Development**

4 5-1401.

5 (j) (1) "Brownfields site" means:

6 (i) An eligible property, as defined in § 7-501 of the Environment  
 7 Article, that is:

8 1. Owned or operated by[:

9 A. An] AN inculpable person, as defined in § 7-501 of the  
 10 Environment Article[; or

11 B. An innocent purchaser that meets the requirements set  
 12 forth in § 7-201(x)(2)(i) of the Environment Article]; and

13 2. Located in a county or municipal corporation that has  
 14 elected to participate in the Brownfields Revitalization Incentive Program in  
 15 accordance with § 5-1408(a) of this subtitle; or

16 (ii) Property where there is a release, discharge, or threatened  
 17 release of oil, as defined in § 4-401 of the Environment Article, that is:

18 1. Subject to [a corrective action plan approved by the  
 19 Department of the Environment in accordance with] THE PROVISIONS OF Title 4 of  
 20 the Environment Article; and

21 2. Located in a county or municipal corporation that has  
 22 elected to participate in the Brownfields Revitalization Incentive Program in  
 23 accordance with § 5-1408(a) of this subtitle.

24 (2) "Brownfields site" does not include property that is owned or  
 25 operated by a responsible person or a person responsible for the discharge.

26 5-1408.

27 (a) A county or municipal corporation may elect to participate in the  
 28 Brownfields Revitalization Incentive Program by:

29 (1) (I) Submitting to the Department a list of potential Brownfields  
 30 sites in the county or municipal corporation, ranked in the order of priority for  
 31 redevelopment recommended by the county or municipal corporation; and

32 [(2)] (II) Annually updating the list submitted under [paragraph (1)]  
 33 ITEM (I) of this [subsection] ITEM; OR

